

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

GIOVANI HORNEA,

Defendant.

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**17-CR-157-RJA**

**SENTENCING MEMORANDUM**

Giovani Hornea is the third and final defendant to be sentenced by this Court in three related cases.<sup>1</sup> Accordingly, this Court is well aware of the circumstances of the offense, as well as personal circumstances shared by each of the defendants. Indeed, like his two co-defendants, Mr. Hornea is a Romanian National, or a Ramani. The travails of these nomadic people, commonly referred to as a “gypsies” are well known. Mr. Hornea was born in Romania but has led an itinerant life. He was brought to the United States by his parents as a teenager, and, trying to carve out a life for himself and his own young family (Giovani has two children, one and two years old), has lived in various places within the United States.

Unlike his co-defendants, however, Giovani is barely an adult – he is now only 21 years old. At the time the offense-conduct began, he was only 19 years old. He is ten years younger than co-defendant Nicolae Sarbu. This is significant because Mr. Sarbu brought Giovani into the scheme, telling Giovani that he (Sarbu) knew of a way to make money. Mr. Sarbu was the ringleader of the scheme; Sarbu taught Giovani how to use the devices, and kept the lion’s share of the ill-gotten proceeds for himself – Sarbu would give Giovani only “a couple hundred

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<sup>1</sup> See *United States v. Nicolea Sarbu*, 17-CR-008; *United States v. Marinela Unguru-Ducila*, 17-CR-007.

dollars” as compensation in scheme that netted hundreds of thousands of dollars. As Probation Officer Lindsay Maza remarks in the PSR, after detailing various crimes committed by Mr. Sarbu, “Notably, Giovanni Hornea was not present during this fraudulent activity and had not yet entered the conspiracy.” (§ 12.) There are, in fact, surveillance videos of the criminal activity where Mr. Sarbu can be seen teaching Giovanni how to use the fraudulent devices. Mr. Sarbu received a sentence of 25 months for his role in the scheme.<sup>2</sup> The parties and the Probation Department have calculated Giovanni’s guideline range to be 33-41 months.

None of this means that Giovanni has not accepted responsibility for his own role in the offense. Indeed, while many defendants accept responsibility for their crimes, during the presentence interview, Giovanni was convincingly adamant: “Wrong thing. Never again,” he forcefully declared before even being asked about his acceptance of responsibility. He said that he wouldn’t do it again even for a million dollars.

Giovanni will likely be removed from this country when his sentence is complete. Further, although he has been in pretrial custody for over one year, he will likely receive no credit towards his ultimate sentence because his is in primary state custody. Counsel requests that these factors be taken into account when fashioning a sentence that is sufficient but not greater than necessary.

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<sup>2</sup> Mr. Sarbu’s wife, Ms. Unguru-Ducila, pleaded guilty to Misprison of a Felony and was sentenced by this Court April 26, 2017 to time served (approximately 11 months).

**DATED:** Buffalo, New York, December 13, 2017

Respectfully submitted,

**/s/ Jeffrey T. Bagley**

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